IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Dutta et al.**	§	
	§	Group Art Unit: **2152**
Serial No. **09/838,368**	§	
	§	Examiner: **Ramsey Refai**
Filed: **April 19, 2001**	§	
	§	
For: **Automatic Backup of Wireless Mobile Device Data Onto Gateway Server While Device is Idle**	§	

Commissioner for Patents
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35525
PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on November 13, 2006.

No fees are required for the filing of this Appeal Brief. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, New York.

RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-39.

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: 1-5, 8, 9, 11, 17-22, 24, 26-31, 33-35 and 39.
2. Claims withdrawn from consideration but not canceled: none.
3. Claims pending: 6, 7, 10, 12-16, 23, 25, 32 and 36-38.
4. Claims allowed: none.
5. Claims rejected: 6, 7, 10, 12-16, 23, 25, 32 and 36-38.
6. Claims objected to: none.

C. CLAIMS ON APPEAL

The claims on appeal are: 6, 7, 10, 12-16, 23, 25, 32 and 36-38.

STATUS OF AMENDMENTS

An amendment after final rejection was filed by Appellants on November 13, 2006, and was indicated by the Examiner as being entered in an Advisory Action dated December 1, 2006.

SUMMARY OF CLAIMED SUBJECT MATTER

Generally speaking, the present invention is directed to a particular technique for automatically backing up data from a wireless device over a wireless network, such that the data for such a wireless device could be recovered if the wireless device failed or lost power (such as a drained battery) and the data stored in its volatile memory is lost. However, many wireless devices, such as a wireless telephone or cell phone, have limited resource and computing capabilities such as limited storage and thus have a limited ability to internally maintain application programs that would otherwise be required to perform an automated data backup of data from within the wireless device. Even if the data backup operation is initiated or triggered by another device having more resources, such as a backup server, a problem still exists as to how the wireless device with limited resource capability can perform or execute a data backup operation due to such resource constraints. For example, in situations where the backup application is *not* internally stored in the wireless device, the wireless device still needs access to such backup application in order to execute the application to effectuate the data backup operation – i.e., some program must run/execute within the wireless device to retrieve the data that is internally maintained within the wireless device. Since the application program is not internally stored in this scenario, one approach might be to just send the application to the wireless device for execution thereof. However, it may not be appropriate to send such an application directly to such a wireless device for immediate execution, as the wireless device may be busy performing another service or task. In this situation, the user could be notified of the need/desire to initiate and perform such application download operation, but there is a desire to perform the data backup operation in an automated fashion without user intervention. Thus, a technique is needed to provide an unattended data backup of data for a wireless device having limited resources. A request to backup data is pushed over a wireless network to the wireless device. *Included in such request is a uniform resource identifier for an application that the wireless device can retrieve and execute in order to effectuate the data backup operation*, such that the wireless device itself is able to perform the data backup operation without user

intervention by transmitting its data to a server, notwithstanding the fact that the wireless device is resource-constrained and thus does not have the data backup application permanently stored within the wireless device.

A. CLAIM 6

Claim 6 is directed to a method for backing up data. A connection is established at a server with a wireless device over a wireless network using a wireless protocol. A request is pushed over the wireless network to the wireless device to backup data, where the step of pushing the request comprises sending a textual based service load to a proxy server. The textual based service load provides *a uniform resource identifier for an application that the wireless device may retrieve and execute on the wireless device in order to transmit the data to the server.* The proxy server is configured to translate the textual based service load to a binary based service load and send the translated binary based service load to the wireless device. The data is received from the wireless device, and stored on a storage device coupled to the wireless network. (Specification page 15, line 15 – page 18, line 3; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

B. CLAIM 10

Claim 10 is directed to a method on a proxy server for facilitating data backup. A request is received from a backup server in a first protocol, for a wireless client to backup data to the backup server. The request is a textual based service load that provides the wireless client with *a uniform resource identifier for an application which will identify, locate and transmit the data to the server.* The request formatted in the first protocol is translated into a translated request formatted in a second protocol, where the second protocol is compatible with the wireless client. The translated request is sent to the wireless client over a wireless network. The data from the wireless client and formatted in a third protocol is received over the wireless network. The data formatted in the third protocol is translated into translated data formatted in a fourth protocol compatible with the backup server. This translated data is sent to the backup server. (Specification page 15, line 15 – page 18, line 3; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

C. CLAIM 14

Claim 14 is directed to a method for backing up data. Responsive to receipt of a command from a backup server via a wireless network to backup data, the data to be backed up is retrieved from storage within a wireless client. The data to be backed up is transmitted to the backup server via the wireless network utilizing a wireless protocol. The *command from the backup server includes a location of an application to be executed by the wireless client* to transmit the data to be backed up to the backup server (Specification page 15, line 15 – page 17, line 23; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

D. CLAIM 23

Claim 23 is directed to a computer program product in a computer readable media for use in a data processing system implemented as a server for backing up data. First instructions are provided for establishing a connection with a wireless device over a wireless network using a wireless protocol. Second instructions are provided for enabling a request to backup data to be pushed over the wireless network to the wireless device, where the request comprises a textual based service load and is sent to a proxy server. The textual based service load provides *a uniform resource identifier for an application that the wireless device may retrieve and execute on the wireless device in order to transmit the data to the server*. The proxy server is configured to translate the textual based service load to a binary based service load and send the translated binary based service load to the wireless device. Third instructions are provided for receiving the data from the wireless device, and fourth instructions are provided for storing the data on a storage device connected to the wireless network. (Specification page 15, line 15 – page 18, line 3; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

E. CLAIM 25

Claim 25 is directed to a computer program product in a computer readable media for use in a data processing system implemented as a server for backing up data. First instructions are provided for establishing a connection with a wireless device over a wireless network using a wireless protocol. Second instructions are provided for enabling a request to backup data to be pushed over the wireless network to the wireless device, where the request comprises a textual based service load and is sent to a proxy server, where the service load provides *a uniform resource identifier for an application*

that the wireless device may retrieve to transmit the data to the server, and where the proxy server is configured to translate the textual based service load to a binary based service load and send the translated binary based service load to the wireless device. Third instructions are provided for receiving the data from the wireless device. Fourth instructions are provided for storing the data on a storage device connected to the wireless network (Specification page 15, line 15 – page 17, line 23; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

F. CLAIM 32

Claim 32 is directed to a system for facilitating data backup. A request receiver receives a request in a first protocol from a backup server requesting that a wireless client to backup data to the backup server. The request is a textual based service load that provides the wireless client with *a uniform resource identifier for an application which will identify, locate and transmit the data to the server*. A first translator translates the request formatted in the first protocol into a translated request formatted in a second protocol, where the second protocol is compatible with the wireless client. A first transmitter sends the translated request to the wireless client via a wireless network. A data receiver receives the data from the wireless client via the wireless network, the data being formatted in a third protocol. A second translator translates the data formatted in the third protocol into translated data formatted in a fourth protocol compatible with the backup server. A second transmitter sends this translated data to the backup server. (Specification page 15, line 15 – page 18, line 3; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

G. CLAIM 36

Claim 36 is directed to a system for backing up data to a server via a network. This system includes a data retriever which, in response to receipt of a command from a backup server via a wireless network to backup data, retrieves (without user intervention) the data to be backed up from storage within a client. The system also includes a transmitter which transmits, without user intervention, the data to be backed up to the backup server via the wireless network utilizing a wireless protocol, where *the command from the backup server comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server.*

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to review on appeal are as follows:

1. Whether Claims 6, 7, 14-16, 25 and 36-38 are obvious over *Lazaridis et al.* (U.S. Patent No. 6,401,113) in view of *Muir et al.* (U.S. Patent No. 6,088,515); and

2. Whether Claims 10, 12, 13, 23 and 32 are obvious over *Lazaridis et al.* (U.S. Patent No. 6,401,113) in view of *Zarom* (U.S. Patent No. 6,356,529) and further in view of *Muir et al.* (U.S. Patent No. 6,088,515) under 35 U.S.C. §103(a).

ARGUMENT

A. GROUND OF REJECTION 1 (Claims 6, 7, 14-16, 25 and 36-38)

A.1. Claim 6

With respect to Claim 6, it is urged that none of the cited references teach or suggest the claimed feature of "wherein the step of pushing the request comprises sending a textual based service load to a proxy server, *wherein the textual based service load provides a uniform resource identifier for an application that the wireless device may retrieve and execute on the wireless device in order to transmit the data to the server*". In rejecting Claim 6, the Examiner states that this feature is taught by the cited *Muir* reference at col. 3, lines 1-42, the Abstract, and Figure 1. Appellants urge that these passages describe that a network browser on a client node obtains a first/web page from a network server node and displays the web page to a user of the client node (col. 3, lines 13-16). When the user then selects an *application program for remote execution on an application execution server*, the network browser obtains a network configuration file that corresponds to the selected remote application from a network server (col. 3, lines 16-20). The network browser starts a client agent which will communicate with the selected remote application (col. 3, lines 21-22). This remote application program remains at, and is executed on, the application execution server (col. 3, lines 32-42; Figure 1, element 36). These teachings are substantially different from the features recited in Claim 6, as will now be shown in detail.

First, this *Muir* cited passage describes that a user selects an application program to execute by selecting a hyperlink using a mouse or keyboard. In contrast, per the features of Claim 6, a request to backup data is *pushed* to the client device (where this pushing of the request comprising sending the service load to the proxy server), and this *pushed request includes sending a service load containing the uniform resource locator* (i.e., manual selecting of a command/request by a client device, per the teachings of the cited reference, versus automated *pushing* of the command/request to the client device, as claimed). It should be further noted that the cited *Lazaridis* reference describes the pushing of user *data* (col. 2, lines 55-58), and not a *request to backup data*, from a host/server to a mobile device.

Second, after the user has manually selected the hyperlink for a desired application per

the teachings of *Muir*, the network browser obtains a configuration file that corresponds to the requested application (col. 3, lines 19-23). *This configuration file is not executed*, but rather contains information that is read from such file and then used to establish a communication link between the client and server (*Muir* Abstract; col. 3, lines 24-29). In contrast, per Claim 6 a uniform resource locator for the *application itself – the application that the wireless device retrieves and executes* - is provided in the service load. Restated, per the teachings of the cited *Muir* reference, the alleged 'identifier' is for a *configuration file containing information that is read*, whereas per Claim 6 the 'identifier' is for the *application itself that is retrieved and executed by the wireless device.*

Third, *Muir* teaches that the client-requested application that is executed remains in a fixed location on the application execution server. In contrast, and as alluded to above, Claim 6 recites that the service load provides a uniform resource identifier for an application *that the wireless device may retrieve and execute on the wireless device to transmit the data to the server* (i.e., *remote* execution of an application, per the teachings of the cited reference, versus *local* execution of an application, as claimed).

Thus, the combination of references used in rejecting Claim 6 do not teach or suggest (i) *pushing*, to the client device, *a request* to backup data, where pushing this request includes (ii) sending a service load that provides a uniform resource *identifier for an application*, or (iii) that the identified application is an application that the wireless device may *retrieve and execute* in order to transmit data to the server. Accordingly, a *prima facie* case of obviousness has not been established with respect to Claim 6 as all of the claim limitations are not taught or suggested by the cited references, and thus Claim 6 has been erroneously rejected[1].

These missing claimed features advantageously provide for an automated technique for backing up data from a wireless device that may be resource constrained, and thus cannot provide a typical web browsing model (Specification page 11, line 9 – page 12, line 15). The teachings of *Muir* do in fact provide such traditional web browsing model (*Muir* col. 3, lines 13-53), and

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[1] To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. *See also, In re Royka*, 490 F.2d 580 (C.C.P.A. 1974). If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

thus a person of ordinary skill in the art, when confronted with the teachings of *Muir*, would not have been motivated to modify such teachings in accordance with the features recited in amended Claim 1 (pushing backup request to wireless device; providing an identifier to an application that may be retrieved by and executed on a wireless device). Thus, it is urged that Claim 6 is not obvious in view of the cited references as there are claimed features not taught or suggested by the cited references, and therefore Claim 6 has been erroneously rejected.

A.2. Claim 7

Appellants initially urge error in the rejection of Claim 7 for reasons given above with respect to Claim 6 (of which Claim 7 depends upon).

Further with respect to Claim 7, and contrary to the Examiner's assertion, the cited *Muir* reference does *not* teach or suggest the claimed features of "sending a request by the wireless device to the proxy server to retrieve the application identified by the uniform resource identifier; receiving the application by the wireless device; and executing the application by the wireless device to transfer the data requested to be backed up". As can be seen, the application which is identified by the uniform resource locator (provided in the service load that is sent as a part of pushing the request to backup data) is received by the wireless device, and executed by the wireless device. The cited *Muir* reference states that a configuration file (which is not an application to be executed) is read by the client device (per Claim 7, the application *itself* is received and executed by the wireless device). The routines that are described as being executed by the wireless device itself per the teachings of the cited *Muir* reference are (i) a network browser, and (ii) a client agent (*Muir*, col. 3, lines 13-53). Quite simply, *Muir's* user selected application is not received and executed by the client. Rather, it is executed on a remote application server (Abstract; col. 3, lines 35-36). Thus, it is further urged that Claim 7 is not obvious in view of the cited references as there are additional claimed features not taught or suggested by the cited references, and therefore Claim 7 has been erroneously rejected.

A.3. Claims 14-16, 25 and 36-38

With respect to Claims 14-16 (and similarly for Claims 25 and 36-38), Claim 14 recites "responsive to receipt of a command from a backup server via a wireless network to backup data, retrieving, without user intervention, the data to be backed up from storage within a wireless

client". As can be seen, data to be backed up from storage within the wireless client is retrieved without user intervention in response to *receipt of a command from a backup server to backup data*. In rejecting this aspect of Claim 14, the Examiner cites *Lazaridis* teaching at col. 7, lines 24-34 as teaching such claimed feature. Appellants urge that none of these user-defined event triggers are described as being commands from a backup server to which the data to be backed up from the wireless client is transmitted to. Rather, the described events are a command message *from the mobile device*, a command message *from some other external computer*, sensing user proximity to a host system, or any other event that is *external to the host system*. Various internal events such as screen saver activation, keyboard timeout, and programmable timer are also described as possible trigger events. There is no teaching of any type of receiving of a *command to backup data from a backup server*, and in fact the entire premise of the *Lazaradis'* teachings is to *eliminate any such requirement for such a command*, as it instead teaches continuous pushing of data in response to an event trigger (col. 1, lines 31-39). Thus, since there is no such backup command from a backup server, it necessarily follows that there is no command that comprises *a location of an application to be downloaded to and executed by a wireless client*, as required by the features of Claim 14[2]. In addition, as there is no backup command by a backup server, there would have been no motivation to modify the teachings of *Lazaridis* to include such as a backup command, as *Lazaridis* expressly teaches eliminating any requirement for commands such a backup command. It is thus urged that Claim 14 (and similarly for Claims 15, 16, 25 and 36-38) is not obvious in view of the cited references, and therefore has been erroneously rejected.

[2] Nor does the *Muir* configuration file overcome such teaching/suggestion deficiency, as such configuration file instead contains information that is read from such file and then used to establish a communication link between the client and server (*Muir* Abstract; col. 3, lines 24-29), as previously described.

B. GROUND OF REJECTION 2 (Claims 10, 12, 13, 23 and 32)

B.1. Claims 10, 12, 13 and 32

With respect to Claim 10 (and similarly for Claims 12, 13 and 32), it is urged that none of the cited references teach or suggest the claimed feature of "wherein the request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server". In rejecting these features of Claim 10, the Examiner states that such features are taught by the cited *Muir* reference at the same *Muir* passage cited in rejecting Claim 6. For similar reasons to those given above in the traversal of the Claim 6 rejection, *Muir* does not teach/suggest a proxy server that (i) receives a *request from a backup server* for a wireless device *to backup data* where this request (ii) is a service load that provides the wireless device with *a uniform resource identifier for an application*, or (iii) that the identified application performs *all three* functions of identifying, locating and transmitting the requested data to the backup server. Rather, the user manually selects an application to be executed on a different node (an application execution server), and once the application is executing on the application execution server, the client agent (and not the application) is responsible for receiving data from the user (through the mouse or keyboard) and transmitting it to the application program (*Muir* col. 3, lines 35-42). The 'application' (as identified by a uniform resource identifier provided in a received service load) does *not* 'identify, locate, and transmit' requested data to the backup server, as per the features of original Claim 10[3]. It is thus urged that Claim 10 is not obvious in view of the cited references as there are claimed features not taught or suggested by the cited references, and therefore Claim 10 has been erroneously rejected.

B.2. Claim 23

Appellants urge error in the rejection of Claim 23 for substantially the same reasons as given above with respect to Claim 6, and urge that none of the cited references teach or suggest a

[3] Nor does the *Muir* configuration file overcome such teaching/suggestion deficiency, as such configuration file instead contains information that is read from such file and then used to establish a communication link between the client and server (*Muir* Abstract; col. 3, lines 24-29), as previously described.

computer program product comprising instructions for (i) *pushing*, to the client device, *a request* to backup data, where pushing this request includes (ii) sending a service load that provides a uniform resource *identifier for an application*, or (iii) that the identified application is an application that the wireless device may *retrieve and execute* in order to transmit data to the server, as previously established above with respect to Claim 6. Accordingly, a *prima facie* case of obviousness has not been established with respect to Claim 23 as all of the claim limitations are not taught or suggested by the cited references, and thus Claim 23 has been erroneously rejected.

Appellants have thus shown clear error in the Examiner's final rejection of all pending claims under 35 USC §103(a), as there are numerous missing claimed features that are not taught or suggested by the cited references. Accordingly, Appellants respectfully request that the Board reverse the rejection of all pending claims.

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CLAIMS APPENDIX

The text of the claims involved in the appeal are:

6. A method for backing up data, the method comprising:

establishing at a server a connection with a wireless device over a wireless network using a wireless protocol;

pushing, over the wireless network to the wireless device, a request to backup data, wherein the step of pushing the request comprises sending a textual based service load to a proxy server, wherein the service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server, and wherein the proxy server is configured to translate the textual based service load to a binary based service load and send the translated binary based service load to the wireless device;

receiving the data from the wireless device; and

storing the data on a storage device coupled to the wireless network.

7. The method as recited in claim 6, further comprising steps of:

sending a request by the wireless device to the proxy server to retrieve the application identified by the uniform resource identifier;

receiving the application by the wireless device; and

executing the application by the wireless device to transfer the data requested to be backed up.

10. A method on a proxy server for facilitating data backup, the method comprising:

receiving a request in a first protocol from a backup server for a wireless client to backup data to the backup server, wherein the request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server;

translating the request formatted in the first protocol into a translated request formatted in a second protocol, wherein the second protocol is compatible with the wireless client;

sending the translated request to the wireless client over a wireless network;

receiving over the wireless network the data from the wireless client formatted in a third protocol;

translating the data formatted in the third protocol into translated data formatted in a fourth protocol compatible with the backup server; and

sending the translated data to the backup server.

12. The method as recited in claim 10, wherein the third protocol is a wireless application protocol.

13. The method as recited in claim 10, wherein the fourth protocol is a hypertext transfer protocol.

14. A method for backing up data, the method comprising:

responsive to receipt of a command from a backup server via a wireless network to backup data, retrieving, without user intervention, the data to be backed up from storage within a wireless client; and

transmitting, without user intervention, the data to be backed up to the backup server via the wireless network utilizing a wireless protocol, wherein the command from the backup server comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server.

15. The method as recited in claim 14, wherein the data to be backed up is sent to the server by way of a proxy server and is sent using a wireless application protocol.

16. The method as recited in claim 14, further comprising:

transmitting a request to the backup server via the wireless network to retrieve backed up data;

receiving the backed up data from the backup server via the wireless network; and

storing the backed up data on the wireless client.

23. A computer program product in a computer readable media for use in a data processing system implemented as a server for backing up data, the computer program product comprising:

first instructions for establishing a connection with a wireless device over a wireless network using a wireless protocol;

second instructions for enabling a request to backup data to be pushed over the wireless network to the wireless device, wherein the request comprises a textual based service load and is sent to a proxy server, wherein the service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server, and wherein the proxy server is configured to translate the textual based service load to a binary based service load and send the translated binary based service load to the wireless device;

third instructions for receiving the data from the wireless device; and

fourth instructions for storing the data on a storage device connected to the wireless network.

25. A computer program product in a computer readable media for use in a data processing system implemented as a wireless client for backing up data, the computer program product comprising:

first instructions, responsive to receipt of a command from a backup server via a wireless network to backup data, for retrieving, without user intervention, the data to be backed up from storage within a wireless client; and

second instructions for enabling the transmission of the data, without user intervention, to be backed up to the server via the wireless network utilizing a wireless protocol, wherein the command from the backup server comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server.

32. A system for facilitating data backup, the system comprising:

a request receiver which receives a request in a first protocol from a backup server requesting that a wireless client backup data to the backup server, wherein the request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server;

a first translator which translates the request formatted in the first protocol into a translated request formatted in a second protocol, wherein the second protocol is compatible with the wireless client;

a first transmitter which sends the translated request to the wireless client via a wireless network;

a data receiver which receives the data from the wireless client via the wireless network formatted in a third protocol;

a second translator which translates the data formatted in the third protocol into translated data formatted in a fourth protocol compatible with the backup server; and

a second transmitter which sends the translated data to the backup server.

36. A system for backing up data to a server via a network, the system comprising:

a data retriever which, responsive to receipt of a command from a backup server via a wireless network to backup data, retrieves, without user intervention, the data to be backed up from storage within a client; and

a transmitter which transmits, without user intervention, the data to be backed up to the backup server via the wireless network utilizing a wireless protocol, wherein the command from the backup server comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server.

37. The system as recited in claim 36, wherein the wireless device is a wireless phone.

38. The system as recited in claim 36, wherein the wireless device is a personal digital assistant.

EVIDENCE APPENDIX

There is no evidence to be presented.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings.